

§ 190.5

Administrator means the Administrator, Pipeline and Hazardous Materials Safety Administration or his or her delegate.

Associate Administrator means the Associate Administrator for Pipeline Safety, or his or her delegate.

Chief Counsel means the Chief Counsel of PHMSA.

Day means a 24-hour period ending at 11:59 p.m. Unless otherwise specified, a day refers to a calendar day.

Hearing means an informal conference or a proceeding for oral presentation. Unless otherwise specifically prescribed in this part, the use of “hearing” is not intended to require a hearing on the record in accordance with section 554 of title 5, U.S.C.

OPS means the Office of Pipeline Safety, which is part of the Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation.

Operator means any owner or operator.

Person means any individual, firm, joint venture, partnership, corporation, association, State, municipality, cooperative association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof.

Presiding Official means the person who conducts any hearing relating to civil penalty assessments, compliance orders, orders directing amendment, safety orders, or corrective action orders and who has the duties and powers set forth in § 190.212.

Regional Director means the head of any one of the Regional Offices of the Office of Pipeline Safety, or a designee appointed by the Regional Director. Regional Offices are located in Trenton, NJ (Eastern Region); Atlanta, Georgia (Southern Region); Kansas City, Missouri (Central Region); Houston, Texas (Southwest Region); and Lakewood, Colorado (Western Region).

Respondent means a person upon whom OPS has served an enforcement action described in this part.

PHMSA means the Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation.

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State means a State of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

[Amdt. 190–6, 61 FR 18513, Apr. 26, 1996, as amended at 68 FR 11749, Mar. 12, 2003; 70 FR 11137, Mar. 8, 2005; Amdt. 190–15, 74 FR 62505, Nov. 30, 2009; Amdt. 190–16, 78 FR 58908, Sept. 25, 2013]

§ 190.5 Service.

(a) Each order, notice, or other document required to be served under this part will be served personally, by certified mail, overnight courier, or electronic transmission by facsimile or other electronic means that includes reliable acknowledgement of actual receipt.

(b) Service upon a person’s duly authorized representative or agent constitutes service upon that person.

(c) Service by certified mail or overnight courier is complete upon mailing. Service by electronic transmission is complete upon transmission and acknowledgement of receipt. An official receipt for the mailing from the U.S. Postal Service or overnight courier, or a facsimile or other electronic transmission confirmation, constitutes prima facie evidence of service.

[45 FR 20413, Mar. 27, 1980, as amended at 73 FR 16567, Mar. 28, 2008; Amdt. 190–16, 78 FR 58909, Sept. 25, 2013]

§ 190.7 Subpoenas; witness fees.

(a) The Administrator, Chief Counsel, or the official designated by the Administrator to preside over a hearing convened in accordance with this part, may sign and issue subpoenas individually on his or her own initiative at any time, including pursuant to an inspection or investigation, or upon request and adequate showing by a participant to an enforcement proceeding that the information sought will materially advance the proceeding.

(b) A subpoena may require the attendance of a witness, or the production of documentary or other tangible evidence in the possession or under the control of person served, or both.

(c) A subpoena may be served personally by any person who is not an interested person and is not less than 18 years of age, or by certified mail.

(d) Service of a subpoena upon the person named in the subpoena is

achieved by delivering a copy of the subpoena to the person and by paying the fees for one day's attendance and mileage, as specified by paragraph (g) of this section. When a subpoena is issued at the instance of any officer or agency of the United States, fees and mileage need not be tendered at the time of service. Delivery of a copy of a subpoena and tender of the fees to a natural person may be made by handing them to the person, leaving them at the person's office with a person in charge, leaving them at the person's residence with a person of suitable age and discretion residing there, by mailing them by certified mail to the person at the last known address, or by any method whereby actual notice is given to the person and the fees are made available prior to the return date.

(e) When the person to be served is not a natural person, delivery of a copy of the subpoena and tender of the fees may be achieved by handing them to a designated agent or representative for service, or to any officer, director, or agent in charge of any office of the person, or by mailing them by certified mail to that agent or representative and the fees are made available prior to the return date.

(f) The original subpoena bearing a certificate of service shall be filed with the official having responsibility for the proceeding in connection with which the subpoena was issued.

(g) A subpoenaed witness shall be paid the same fees and mileage as would be paid to a witness in a proceeding in the district courts of the United States. The witness fees and mileage shall be paid by the person at whose instance the subpoena was issued.

(h) Notwithstanding the provisions of paragraph (g) of this section, and upon request, the witness fees and mileage may be paid by the PHMSA if the official who issued the subpoena determines on the basis of good cause shown, that:

(1) The presence of the subpoenaed witness will materially advance the proceeding; and

(2) The person at whose instance the subpoena was issued would suffer a se-

rious hardship if required to pay the witness fees and mileage.

(i) Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than 10 days after the date of service of such subpoena, apply to the official who issued the subpoena, or if the person is unavailable, to the Administrator to quash or modify the subpoena. The application shall contain a brief statement of the reasons relied upon in support of the action sought therein. The Administrator, or this issuing official, as the case may be, may:

(1) Deny the application;

(2) Quash or modify the subpoena; or

(3) Condition a grant or denial of the application to quash or modify the subpoena upon the satisfaction of certain just and reasonable requirements. The denial may be summary.

(j) Upon refusal to obey a subpoena served upon any person under the provisions of this section, the PHMSA may request the Attorney General to seek the aid of the U. S. District Court for any District in which the person is found to compel that person, after notice, to appear and give testimony, or to appear and produce the subpoenaed documents before the PHMSA, or both.

[45 FR 20413, Mar. 27, 1980, as amended by Amdt. 190-6, 61 FR 18513, Apr. 26, 1996; Amdt. 190-7, 63 FR 7722, Feb. 17, 1998; 70 FR 11137, Mar. 8, 2005; Amdt. 190-16, 78 FR 58909, Sept. 25, 2013]

§ 190.9 Petitions for finding or approval.

(a) In circumstances where a rule contained in parts 192, 193 and 195 of this chapter authorizes the Administrator to make a finding or approval, an operator may petition the Administrator for such a finding or approval.

(b) Each petition must refer to the rule authorizing the action sought and contain information or arguments that justify the action. Unless otherwise specified, no public proceeding is held on a petition before it is granted or denied. After a petition is received, the Administrator or participating state agency notifies the petitioner of the disposition of the petition or, if the request requires more extensive consideration or additional information or